

**PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

**ENERGY DIVISION**

**RESOLUTION E-4006**

**September 7, 2006**

**R E S O L U T I O N**

Resolution E-4006. Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), and San Diego Gas and Electric Company (SDG&E) request authority to update their Direct Access (DA) Switching Exemption Rules to clarify that customers electing to remain on bundled portfolio service (BPS) at the end of their three-year commitment period shall be subject to an additional three-year commitment period. The requests of PG&E, SCE, and SDG&E are approved with modifications.

By PG&E Advice Letter AL 2840-E and SDG&E AL 1801-E Filed on June 2, 2006 and SCE AL 2013-E Filed on June 9, 2006.

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**SUMMARY**

**This resolution modifies the utilities' proposed revisions to the Direct Access (DA) Switching Exemption Rules, consistent with Decision (D.)3-05-034.**

This Resolution clarifies the options available to DA eligible customers at the end of their three-year commitment period on bundled portfolio service (BPS), as provided in D.03-05-034. The utilities shall modify their Switching Exemption Rules to clarify the following.

- a. Customers may return to direct access at any time subsequent to the passage of their minimum three-year commitment to bundled service with the required six months advance notice.
- b. All DA eligible customers are subject to a minimum commitment period of three years if they return to bundled service other than for the temporary safe harbor. That is, all DA customers, whether they have previously returned to BPS or not, would be subject to the three-year minimum commitment period if they return to bundled service.

D.05-03-034 contemplated further consideration of these rules. The utilities may file applications to propose modifications to these rules, providing support as

discussed herein, that an additional BPS commitment period is necessary to manage their bundled portfolios at reasonable rates.

## **BACKGROUND**

**The DA Switching Exemption Rules adopted in D.03-05-034 include a six month advance notice requirement to the utilities for customers switching in or out of bundled service and a three-year BPS commitment period.**

The Commission in Decision (D.) 01-09-060 suspended the right of retail electricity customers to elect DA service. Only those customers that had DA arrangements in place as of September 20, 2001, the suspension date, continue to be eligible for DA service. In D.03-05-034, the Commission adopted the Switching Exemption Rules,<sup>1</sup> which govern the rights and obligations of DA eligible customers to switch between bundled and DA service. To provide the utilities a reasonable opportunity to adjust their portfolios and also to guard against arbitraging or similar activities by customers, the Commission required DA eligible customers to provide a six-month advance notice to the utility prior to any switching into or out of bundled service. Additionally, customers electing to receive bundled portfolio service were required to make a three-year minimum commitment to remain on bundled service (D.03-05-034 OP 11).

In compliance with Resolution E-3843, adopted December 4, 2003 to implement the DA Switching Exemption Rules, the utilities notified DA eligible customers on bundled service at the time that they had the option to return to DA service by April 2004 or remain on bundled service for a three-year commitment period. As a result, the initial group of customers on a three-year BPS commitment period will be eligible to return to DA service in April 2007.

**The utilities filed advice letters to revise their Switching Exemption Rules to specify that customers completing their three-year BPS commitment period will be subject to an additional three-year commitment period unless they provide the utility six months advance notice to return to DA service.**

PG&E filed AL 2840-E; SCE filed AL 2013-E; and SDG&E filed AL 1801-E to propose that the three-year minimum commitment period be an ever greening series of three-year commitment periods until the Commission adopts a different

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1. Electric Rule 22.1 for PG&E and SCE and 25.1 for SDG&E.

commitment period. In D.03-05-034, the Commission stated, "Further proceedings shall be conducted on what options shall be available to returning DA customers after the conclusion of a three-year minimum bundled service commitment, either in terms of a further bundled service commitment or payment of cost responsibility for stranded costs if switching back to DA service." (Ordering Paragraph (OP) 13). In the absence of the further proceedings contemplated by the Commission, the utilities propose to clarify the rules, since customers will be completing their three-year BPS commitment periods beginning in April 2007.

## **NOTICE**

Notice of PG&E AL 2840-E and SDG&E AL 1801-E was made by publication in the Commission's Daily Calendar on June 7, 2006 and SCE AL 2013-E on June 16, 2006. PG&E, SCE, and SDG&E state that a copy of their Advice Letters were mailed and distributed in accordance with Section III-G of General Order 96-A.

## **PROTESTS**

### **Protesting parties, CLECA and CMTA and AReM and DACC argue utilities lack authority to modify the Switching Exemption as proposed; utilities reply.**

The California Large Energy Consumers Association and the California Manufacturers and Technology Association (CLECA and CMTA) jointly protested PG&E AL 2840-E and by separate protest, SCE AL 2013-E, both on June 19, 2006. On the same date, CMTA protested SDG&E AL 1801-E. These protests, which are all the same in substance, argue that the Commission must reject these advice letters, because no authority exists for the utilities to modify the DA Switching Exemption Rules as proposed. CLECA and CMTA maintain that the Commission concluded in D.03-05-034 that the returning DA customer must remain on bundled service for three years, that it must give 6-months notice prior to its subsequent return to DA service, and, importantly, that it must be held responsible for new stranded costs associated with generation procurement decisions made after its return to bundled service. Once the initial three-year period has expired, the DA-eligible customer served on bundled service must provide only the required 6-month notice prior to returning to DA Service.

On June 22, 2006, the Alliance for Retail Energy Markets and the Direct Access Customer Coalition (AReM and DACC) jointly protested all three utility ALs. In their joint protest, AReM and DACC contend that the imposition of an ever

greening series of three-year bundled service commitments “is without basis in fact, law or Commission policy and is in direct contravention of the existing policies of the Commission and “urge the Commission to reject the advice letters or, alternatively, suspend the advice letters and conduct an evidentiary hearing to consider additional requirements applicable to DA-eligible customers.

On June 29, 2006, PG&E replied to the protests by the CLECA and CMTA and the AReM and DACC in one response. SDG&E likewise replied on the same date, as did SCE on July 7, 2006.

The following is a more detailed summary of the major issues raised in the protests.

## **DISCUSSION**

### **D.03-05-034 adopted no further commitment period beyond the three-year minimum bundled portfolio service commitment.**

The protesting parties argue that the current rules do not include a “new commitment period” for those DA eligible customers who elect to remain on BPS at the end of their three-year minimum BPS commitment. Therefore they argue customers are free to migrate on and off of BPS upon six months notice. The utilities in their replies to protests assert that three years is the approved commitment period until the Commission revises the rules. Thus they argue the Commission should reject the protests and act promptly to approve their ALs clarifying that the BPS commitment period continues to be three years unless and until the Commission determines otherwise. In effect, the utilities argue that, in the absence of the further proceedings contemplated in D.03-05-034, we should convert the initial three-year commitment period adopted in D.03-05-034 to an ever greening three-year commitment period without the contemplated further consideration in a formal proceeding. This approach would require the initial group of customers whose three-year BPS commitment expires in April 2007 to return to DA or remain on BPS through April of 2010.

The controversy surrounds currently effective tariff language in Section B.2.b of each utility’s Switching Exemption Rules, which states in substance that at the end of the customer’s initial three-year BPS commitment, customers electing to remain on bundled portfolio service “will automatically be subject to a new commitment period, if any, based on the then current applicable rules in effect.” The utilities in their replies to protests set forth a number of arguments to

support their position that the initial three-year commitment period should be an ever greening commitment period until the Commission adopts a new commitment period. Among these are the following.

1. Nothing has changed to make the three-year minimum commitment period unreasonable;
2. the Commission acknowledged the need for a subsequent commitment by DA eligible customers to remain on BPS; and
3. The Commission intended that there be a commitment period for customers returning to bundled service.

We address these utility arguments in this section.

SCE and SDG&E reason in their replies to protests that if the three-year commitment period was reasonable three years ago (as the Commission found), absent a change of circumstances, the same would be just as reasonable to use today. However, the Commission concluded in D.03-05-034 that further proceedings should be held to develop a more extensive record on the need for bundled service commitments beyond three years. Thus, we can not in this forum reasonably require customers to assume an additional three-year commitment period without further consideration of parties' proposals in a formal proceeding. Electric procurement policies have evolved substantially since 2003. The Commission in D.04-12-048 extended the utilities' procurement authority on a rolling ten-year basis and authorized the utilities to enter into short-term, mid-term, and long-term contracts, with contract delivery start dates through 2014. This authority should provide a significant degree of flexibility for the utilities to manage load variations by executing contracts with different term lengths and by staggering contracts with longer terms. D.03-05-034 states, "DA customers should not have the indiscriminate ability to come and go from bundled service without regard to the cost-shifting effects that may result." (at p. 34). But for utilities to fulfill their obligation to serve their customers, as clarified in Section 454.5 (d)(1),<sup>2</sup> utility portfolios will have to be designed to account for significant short-term swings in end-use demand or resource availability, even

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2. <sup>U</sup>nless indicated, all statutory references are to the California Public Utilities Code. Section 454.5 (d)(1) states, "(d)A procurement plan approved by the commission shall accomplish each of the following objectives: (1) Enable the electrical corporation to fulfill its obligation to serve its customers at just and reasonable rates."

without potential changes in DA loads. If the procurement authority we granted the utilities is not sufficiently flexible to enable them to manage their bundled portfolios with load migration to and from bundled service without significant cost impacts, we need to consider proposals in a formal proceeding as anticipated by the Commission.

SCE asserts that the Commission acknowledged in D.03-05-034 the need for a subsequent commitment by DA eligible customers to remain on BPS in the statement that after the initial three-year commitment period, “[t]hose customers electing to continue on bundled service for a prescribed period, would continue to pay the bundled procurement rate.” (at p. 36-37).

To support their contention that the Commission intended for customers returning to bundled service be subject to a commitment period, SCE and SDG&E cite discussion from D.03-05-034 (p. 36-37), as well as Finding of Fact 12, which states, “A three-year minimum term commitment to bundled service is the shortest period that is sufficient to adequately plan to serve bundled customers and to eliminate the potential for DA customers to base a gaming strategy on anticipated seasonal pricing patterns.”

Yet in the same decision, the Commission stated, “We shall adopt as an initial commitment, a three-year minimum period for returning DA customers to remain on bundled service.” (at p. 39) And directed, “Further proceedings shall be conducted on what options shall be available to returning DA customers after the conclusion of a three-year minimum bundled service commitment, either in terms of a further bundled service commitment or payment of cost responsibility for stranded costs if switching back to DA service.” (OP 13).

**Utility customer notices shall reflect that the Commission has not yet considered a commitment period beyond the conclusion of the three-year minimum BPS period.**

The Commission in Resolution E-3843 directed, “Before two and a half years elapses on a three-year term of bundled service, the utility will provide the bundled service customer with a notice before the customer faces the decision as whether to stay with bundled service or to sign up with an ESP for DA service.” (OP 4) The utilities urge that our prompt approval will enable them to timely send an unambiguous notice to the first group of DA eligible customers concluding their three-year commitment period, informing them of their eligibility to switch back to DA, and their commitment period obligation should

they elect to remain on BPS. In August, the utilities will send out these notices to the initial group of customers that elected to remain on BPS immediately after the implementation of the Switching Exemption Rules for the three-year commitment period.

As discussed in the prior section, the Commission determined that further proceedings are necessary to develop a more extensive record on the need for a BPS commitment period for customers continuing on bundled service following the conclusion of their three-year minimum commitment period. Therefore, utility notices to customers nearing the end of their three-year commitment period shall reflect that (a) the Commission has not yet considered a commitment period beyond the conclusion of the three-year minimum BPS period and (b) customers switching to or from bundled service (excepting transitional bundled service) shall notify the utility six months in advance.

**The three-year BPS commitment period applies to customers on DA service if they elect to return to bundled service.**

PG&E in its reply to the protesting parties maintains that “the protesting parties are incorrect when they argue that customers are “permitted to return to direct access at any time subsequent to the passage of their minimum three-year commitment to bundled service.” (at p. 2). SDG&E in its data response dated July 10, 2006 argued that any change to the switching exemption rules, even on an interim basis, will be applicable to the entire DA-eligible customer base, which represents substantially more load than that which is currently on the BPS commitment period.

In D.03-05-034, the Commission directed, “Customers that elect to receive the bundled portfolio rate shall be required to provide six months advance notice and shall make a three-year minimum commitment to remain on bundled service.” (OP 11). Thus we clarify the following.

1. Customers may return to direct access at any time subsequent to the passage of their three-year minimum commitment to bundled service with the required six months advance notice.
2. All DA eligible customers are subject to the minimum commitment period of three years if they return to bundled service other than for the temporary safe harbor. That is, the three-year minimum commitment period applies to all DA customers that return to bundled service, regardless of whether or not they have previously returned to BPS to date for a three-year minimum commitment period.

Therefore, the utilities shall not modify their Switching Exemption Rules to remove the three-year commitment period but to clarify that it applies to customers on DA service that return to bundled service, except for transitional bundled service (TBS), whether or not they have previously returned to bundled service for a three-year commitment period.

**The utilities may present proposals that an additional BPS commitment period is necessary to manage their bundled portfolios at reasonable rates.**

CLECA and CMTA in their protests stress that the Commission promised further proceedings to examine “whether, or to what extent, a commitment beyond the initial three-year period may be appropriate.” PG&E asserts in its reply to protests that a three year commitment period is essential for utilities to adequately plan energy purchases on behalf of DA customers (at p. 3). PG&E explains that its short term procurement plan takes into account forecasted load to cover a procurement span of approximately two plus years, so a six-month notice period could be insufficient if a large number of DA-eligible customers decides to leave bundled service at the same time. PG&E states that a long term commitment period (i.e., three years) by the former DA customers continues to be needed in order to minimize upward pressure on cost and promote reliable power supplies. SCE similarly states, “A long-term BPS commitment period for DA eligible customers continues to be needed to provide SCE with customer-base certainty to minimize procurement costs to its bundled service customers.” (at p. 4).

The utilities in fact argue in their replies to protests that recent regulatory changes, such as Resource Adequacy Requirements and the Renewable Portfolio Standards, suggest that, if anything, the BPS commitment period should be longer than three years. SCE provides an example. “[S]uppose a DA eligible customer has already completed its initial three year BPS commitment, and SCE must demonstrate its year-ahead resource adequacy. Should SCE assume that it will still be serving that customer’s load a year from now? If SCE makes such an assumption and the customer is permitted to migrate off BPS simply on six months notice, then SCE would have acquired more capacity than it needs. On the other hand, if SCE assumes that the customer will return to DA and the customer does not, then SCE will be short on capacity.” (at p. 4). PG&E explains that it currently has resource adequacy (RA) commitments that exceed 6 months in length. While at this time RA standards are one year out, PG&E suggests that the Commission will likely consider adopting a multi-year RA standard in Phase 2 of the RA proceeding (R. 05-12-013). Moreover, a significant number of DWR



contracts do not expire until 2010 and beyond (at p. 3). SDG&E similarly argues in its protest response, "[M]aintaining the rules, as clarified in the tariff, is even more important today given developments in law and Commission policy regarding Resource Adequacy requirements. The Commission-adopted Resource Adequacy requirements impose very strict capacity obligations. Absent the clarifications and maintaining the three-year commitment, there would be no other safeguards to deal with migrating loads to ensure that such load cannot "free ride" on utility capacity commitments that are part of the Resource Adequacy and resource procurement obligations that the Commission strictly oversees. Thus, the new requirements make the need for the three-year commitment even more compelling." (at p. 2).

Utility arguments need to be examined in a formal proceeding with an opportunity for experts in utility electric procurement, as well as DA Switching Exemption Rules to participate. We note that customers need not remain on bundled service to be responsible for the costs incurred to serve them. For example, in D.06-06-035, the Commission adopted a 10-year Nonbypassable Charge (NBC), for PG&E's Contra Costa 8 generating facility consistent with D.04-12-048.

AReM and DACC argue that "the utilities have failed to make even the barest attempt to demonstrate that the return of any eligible customers to direct access will result in stranded power-supply commitments, or that six months provides them with an inadequate period during which they can adjust their procurement policies and practices and mitigate the effects of stranded power-supply commitments, if any." At p. 4.

As previously mentioned, the initial group of customers whose BPS commitment periods began after the Switching Exemption Rules were implemented by Resolution E-3843 has a commitment period due to expire in April 2007. This is the largest group of customers whose three-year BPS commitment periods will expire simultaneously. Based on data provided by the utilities at the request of Energy Division, this group that will be eligible to switch to DA as of April 2007 is 1.8% of total utility load.

Since the three-year commitment period begins on the date the customer's account is switched to BPS, the three-year commitment period on BPS is customer specific. For example, an account that switched to BPS on July 7, 2004 is subject to a three-year commitment period that will expire approximately July

7, 2007. Based on data provided by the utilities at the request of the Energy Division, an additional 1.6% of total utility load is currently on a three-year BPS commitment period terminating on dates after April 2007 through 2009. Unlike the initial group, this 1.6% will not be eligible to switch to DA service all at one time. The table below shows the aggregated utility load on BPS as a percentage of annualized total utility load from the Commission's web page<sup>3</sup> as of May 31, 2006.

|  | (Annual kWh)           | As a % of Total<br>Utility Load |
|--|------------------------|---------------------------------|
| <b>Total Direct Access Load</b>                                      | 20,739,477,102         | 11.0%                           |
| <b>Total UDC Load</b>  | <b>188,567,220,334</b> |                                 |
| Utility Load Eligible to Switch 4/20/07                              | 3,397,280,724          | 1.8%                            |
| <b>Utility Load Eligible to Switch After<br/>4/2007 through 2009</b> | 3,026,860,177          | 1.6%                            |

The information provided by the utilities on the numbers of customers completing BPS commitment periods as of April 2007 and beyond does not make a compelling case that an additional commitment period beyond the three-year minimum period adopted in D.03-05-034 is immediately necessary. However, if the utilities believe that their bundled portfolio management requires an additional BPS commitment period, the utilities, no later than February 1, 2007, may present their proposals by application with supporting data and serve parties to D.03-05-034, as well as parties in Rulemaking (R.) 02-01-011, R.05-12-013, and R.06-02-013.

Any proposals the utilities present should address the following issues:

- a. Demonstrate that their procurement authority is not sufficiently flexible to manage the bundled portfolio with load migration to and from bundled service without significant and unavoidable cost impacts.

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3. [http://www.cpuc.ca.gov/static/energy/electric/electric+markets/direct+access/to/datamay\\_2006\\_web.xls](http://www.cpuc.ca.gov/static/energy/electric/electric+markets/direct+access/to/datamay_2006_web.xls)

- b. Discuss whether and how customer size differences may be relevant in designing and implementing rules relating to eligible customers' switching between bundled and DA service on a prospective basis. Provide any relevant supporting data.
- c. Demonstrate that movement of DA eligible customers to and from BPS will result in stranded power-supply commitments, or that the required six-month notice provides a utility with inadequate time to adjust its procurement and mitigate the effects of stranded power-supply commitments.

Any proposals the utilities present should also address other issues raised in D.03-05-034, and any other issues the utilities believe are appropriate.

## **COMMENTS**

Public Utilities Code section 311(g)(1) provides that this resolution must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Accordingly, the draft resolution was issued for comment to all parties no later than 30 days prior to being considered by the Commission. PG&E, SCE, SDG&E, AReM, and CMTA provided timely comments on Draft Resolution E-4006 on August 24, 2006. PG&E, SCE, SDG&E and AReM provided timely reply comments on August 29, 2006. This section explains the changes we made to the draft resolution (DR) as a result of the issues addressed in comments and reply comments.

### **Customers returning to bundled service from DA service shall be subject to a three-year commitment period.**

The utilities, in their Comments, recommend the DR be revised to clarify that any DA customer that returns to bundled service is subject to the three-year commitment requirement, whether or not the customer had previously elected to receive bundled service. AReM does not object to this clarification, "as it is consistent with both the letter and the intent of the Switching Exemption Rules" (AReM Reply Comments at p. 1). D.03-05-034 states in Ordering Paragraph 4, "Returning DA customers that elect to remain on bundled service beyond the transitional window period shall be required to make a minimum commitment as a bundled customer for a three-year minimum period in order to continue to receive the bundled portfolio rate." Therefore, Ordering Paragraph 2.b of the DR is revised accordingly.

**A customer that provides six months notice to return to DA service shall not continue on BPS at the end of the six months.**

In rejecting the utilities' advice letter requests to adopt an evergreening three-year BPS commitment period in this forum, we stress the applicability of the six-month notice requirement to switch between DA and bundled service.<sup>4</sup> The six-month notice must be reliable so the utilities can adjust their procurement to accommodate changes in load, as intended in D.03-05-034. The utilities point out in their comments that The DR needs to be clear on what happens if a customer provides six months notice to its utility that it will be switching to DA service, and then no DASR is submitted in a timely manner to complete the switch from bundled service to DA service at the end of the six months notice period. If, after a customer submits a six-month notice to return to DA, and a DASR is not submitted in a timely manner to complete the switch at the end of the six-month notice period, the utilities maintain that the utility will have no choice but to continue serving the customer until such time as a DASR is submitted. The customer could linger on bundled service indefinitely or change to DA service at any time without any meaningful notice to the utility, rendering the six-month notice meaningless and even creating a potential for gaming.

The six-month advance notice was adopted to allow the utility to adjust its procurement to accommodate changes in load. If a customer on bundled service gives the utility six months notice that it plans to return to DA service and then is allowed to remain on bundled service at the end of the six months (or vice versa), then the Commission's intent in adopting the six-month notice requirement is frustrated. As AReM suggests in its reply comments, "Once a utility has received a notice and has made any related adjustments to its portfolio, the rationale advanced by the utilities – protecting other bundled customers from any increased costs incurred to serve the departing customer – does not support requiring the customer to remain on bundled service and pay the bundled tariff rate for another six months." (AReM Reply Comments at p. 1). Neither should a customer on DA service be allowed to continue taking service from an ESP once

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4. SDG&E in its reply comments raised the bazaar scenario whereby a customer, by simultaneously submitting multiple six-month notices, could migrate between DA and the bundled rate on a monthly basis, cherry picking the best rates. Clearly such activity is an abuse of the six-month notice requirement and should not be permitted. Customers shall have only one six-month notice pending at any given time.

the six month notice period has elapsed, and the utility should return the customer to bundled service.

Therefore, we can not support the change proposed by the utilities to Ordering Paragraph 2.a of the DR to allow the customer to remain on bundled service with the option to provide another six-month notice if the customer's ESP does not submit a DASR by the final date specified in the utility's confirmation of receipt of the customer's six-month notice. Instead, once the six-month notice period has elapsed and the utility has not received a DASR by the final date specified in the utility's confirmation of receipt of the customer's six-month notice, the utility shall place the customer on temporary bundled service. If the utility has not received a DASR by the end of the 60-day TBS, then the customer's six-month notice to return to DA shall be cancelled, and that cancellation shall serve as the customer's six-month notice to return to bundled service provided under the existing rules. Similar to the instance where an ESP returns a customer to the utility with no prior notice, the customer shall be served on TBS until the end of the six months. The customer shall also be treated as any other customer returning to bundled from DA service. That is, the three-year commitment period requirement shall apply.

**Additional switching exemption rules may be considered in a new proceeding.**

PG&E recommends that DA-eligible customers who give notice of their intent to resume DA service be required to stay on bundled service through the end of the year to coincide with the period of their utility's procurement cycle. PG&E argues such a requirement is necessary to ensure that bundled customers are not stuck with costs incurred by the utility to forward procure capacity to meet Commission-established resource adequacy requirements. AReM argues that PG&E has not provided clear and convincing evidence, however, that such a requirement is in fact required to protect bundled customers." (AReM Reply Comments at p. 2). As we explained in a previous section, the eligible loads involved do not appear to be substantial. However, the DR invites the utilities to file, at their discretion, applications for the Commission to consider the DA switching exemption rules. To assure expeditious consideration and to invite the necessary expert participation, the DR is modified to require that any utility applications in this matter be filed no later than February 1, 2007 and to broaden the service list. PG&E may recommend this and any additional appropriate rules in the applications we direct herein.

**SCE is not required to resend customer notices.**

The Draft Resolution requires the utilities to provide courtesy notices to customers that are nearing the end of their three-year BPS commitment to reflect that (a) the Commission has not yet considered a commitment period beyond the conclusion of the three-year minimum period and (b) customers switching to or from bundled service (except transitional bundled service) shall notify the utility six months in advance. SCE in its comments stated that, on August 21, it sent notices to customers whose three-year term will expire on April 20, 2007. These notices simply provided that if the DA eligible customer elects to switch its service account to DA service after the end of its three-year commitment, the customer must provide six months advance notice to SCE. SCE provided a copy of the customer notice with its comments on the DR. The notice did not include any statement regarding any subsequent commitment period, and SCE believes the notices complied with the intent of Ordering Paragraph 3 of the Draft Resolution. SCE requests that the Commission clarify in the final Resolution that SCE has demonstrated that its customer notices were consistent with the intent of Ordering Paragraph 3; therefore SCE is not required to resend customer notices containing the precise language. We concur. SCE need not resend customer notices containing the precise language, and we have added a finding to this effect.

**The utilities are not required to provide ESPs information about customers that are nearing the end of their BPS commitment periods.**

AReM supports the DR but requests that the DR be revised to direct the utilities to inform ESPs of the identity of DA eligible customers that are nearing the end of their three-year BPS commitments. AReM observes that no guarantee exists that the required utility notice will get to the right person at a company, i.e., the person responsible for making energy supply decisions. The utility is not responsible if a customer does not receive the notice. Thus AReM argues that the best way to ensure that DA eligible customers nearing the end of their BPS commitments are aware of their options is for the utilities to inform ESPs of the identity of such customers and allow ESPs to contact the customers directly. In reply comments, PG&E, SCE, and SDG&E express concern regarding AReM's proposal that the utilities must provide ESPs with identification information of the DA eligible customers. As PG&E argues, this proposal is outside the scope of the DR and raises significant customer privacy concerns. In D.97-05-040, written authorization by the customer is required to disclose information to a designated electric service provider. (Ordering Paragraph 5.1 and at p. 60).

We do not adopt AReM's proposal to require the utilities to provide ESPs with information about DA eligible customers. Such a requirement is burdensome and likely to create customer dissatisfaction. ESPs are free to market their services more globally, with the knowledge that the largest simultaneous group will be eligible to return to DA in April 2007.

## **FINDINGS**

1. PG&E and SDG&E filed Advice Letters (AL) 2840-E and 1801-E respectively on June 2, 2006; and SCE filed AL 2013-E on June 9, 2006 to clarify the options available to direct access (DA) eligible customers at the end of their three-year commitment period on bundled portfolio service (BPs), as provided in D.03-05-034.
2. In August 2006, the utilities are due to send the eight-month notices to DA eligible customers, as directed in OP 4 of Resolution E-3843, informing them of their eligibility to switch back to DA service at the end of their three-year BPS commitment period. To enable the utilities to send unambiguous notices as to the rules that apply to customers who remain on bundled service, the utilities request prompt approval clarifying that such customers will be subject to a further BPS commitment period of three years until the Commission determines otherwise.
3. The DA Switching Exemption Rules adopted in D.03-05-034 include a six month advance notice requirement to the utilities for customers switching to or from bundled service (excepting transitional bundled service) and a three-year BPS commitment period for customers moving from DA to bundled service.
4. The Commission in D.03-05-034 did not adopt any additional commitment period on bundled service following the three-year minimum commitment period but did provide for the customer to have the opportunity to return to DA, with requisite advance notice to the utility, as soon as the three-year commitment period ends.
5. The Commission in D.04-12-048 extended the utilities' procurement authority on a rolling ten-year basis and authorized the utilities to enter into short-term, mid-term, and long-term contracts, with contract delivery start dates through 2014.

6. If utility procurement authority is not sufficiently flexible to enable them to manage their bundled portfolios with load migration to and from bundled service without significant and unavoidable cost impacts, we need to consider proposals in a new formal proceeding with an opportunity for experts in electric procurement, as well as in the DA switching rules to participate
7. The information provided to the Energy Division by the utilities on the numbers of customers completing BPS commitment periods as of April 2007 and beyond does not make a compelling case that an additional commitment period beyond the three-year minimum period adopted in D.03-05-034 is immediately necessary.
8. SCE has demonstrated that its customer notices were consistent with the intent of the directives contained in the draft resolution. Therefore SCE is not required to resend customer notices containing the precise language.
9. The California Large Energy Consumers Association and the California Manufacturers and Technology Association (CLECA and CMTA) jointly protested PG&E AL 2840-E and by separate protest, SCE AL 2013-E, both on June 19, 2006. On the same date, CMTA protested SDG&E AL 1801-E. On June 22, 2006, the Alliance for Retail Energy Markets and the Direct Access Customer Coalition (AReM and DACC) jointly protested all three utility ALs.
10. On June 29, 2006, PG&E responded to the protests by the CLECA and CMTA and the AReM and DACC in one response. SDG&E likewise responded on the same date, as did SCE on July 7, 2006.

**THEREFORE IT IS ORDERED THAT:**

1. The request of PG&E in AL 2840-E, SCE in AL 2013-E, and SDG&E in AL 1801-E to clarify the rules applicable to customers at the end of their three-year BPS commitment period is approved as modified herein.
2. Within 7 days of the effective date of this resolution, PG&E shall supplement AL 2840-E, SCE shall supplement AL 2013-E, and SDG&E shall supplement AL 1801-E to reflect the modifications to their proposed tariffs as specified and explicitly adopted in this resolution, including provisions that:
  - a. Customers may return to direct access at any time subsequent to the passage of their minimum three-year commitment to bundled service with the required six months advance notice; and



- b. All DA eligible customers are subject to a minimum commitment period of three years if they return to bundled service other than for the temporary safe harbor. That is, all DA customers, whether they have previously returned to BPS or not, would be subject to the three-year minimum commitment period if they return to bundled service.

These supplemental ALs shall be effective on the date filed, subject to Energy Division's determining that they are in compliance with this Order.

- 3. If a customer's six-month notice period to switch to DA service elapses and the utility has not received a DASR by the final date specified in the utility's confirmation of receipt of the customer's six-month notice, the utility shall place the customer on temporary bundled service. If the utility has not received a DASR by the end of the 60-day TBS, then the customer's six-month notice to return to DA shall be cancelled, and that cancellation shall serve as the customer's six-month notice to return to bundled service provided under the existing rules. The customer shall be served on TBS until the end of the six months. The customer shall also be treated as any other customer returning to bundled from DA service. That is, the three-year commitment period requirement shall apply.
- 4. Utility notices to customers nearing the end of their three-year commitment period shall reflect that (a) the Commission has not yet considered a commitment period beyond the conclusion of the three-year minimum commitment period and (b) customers switching to or from bundled service (excepting transitional bundled service) shall notify the utility six months in advance. To the extent that utilities have issued notices prior to the effective date of this resolution that did not contain these statements or, at the discretion of the Energy Division, their substance, utilities shall send affected customers an additional notice containing this explicit information.
- 5. If the utilities believe that their bundled portfolio management requires an additional BPS commitment period, the utilities may present their proposals no later than February 1, 2007 by application with supporting data and serve parties to D.03-05-034, as well as parties in Rulemaking (R.) 02-01-011, R.05-12-013, and R.06-02-013. Any proposals that the utilities present should address the following issues:
  - a. Demonstrate that utility procurement authority is not sufficiently flexible to manage the bundled portfolio with load migration to and from bundled service without significant and unavoidable cost impacts.
  - b. Discuss whether and how customer size differences may be relevant in designing and implementing rules relating to eligible customers' switching

between bundled and DA service on a prospective basis. Provide any relevant supporting data.

- c. Demonstrate that movement of DA eligible customers to and from BPS will result in stranded power-supply commitments, or that the required six-month notice provides a utility with inadequate time to adjust its procurement and mitigate the effects of stranded power-supply commitments.

Any proposals the utilities present should also address other issues raised in D.03-05-034, and any other issues the utilities believe are appropriate.

6. The utilities shall not be required to inform ESPs of the identity of DA eligible customers that are nearing the end of their three-year BPS commitments.
7. The protests of CLECA and CMTA and AReM and DACC are granted to the extent specified herein and in all other respects denied.

This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on September 7, 2006; the following Commissioners voting favorably thereon:

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STEVE LARSON  
Executive Director

MICHAEL R. PEEVEY  
PRESIDENT  
GEOFFREY F. BROWN  
DIAN M. GRUENEICH  
JOHN A. BOHN  
RACHELLE B. CHONG  
Commissioners